

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:19-cv-789

CAI DRACO PISTOL, SERIAL NO. DA178112R0  
TWO MAGAZINES AND 80 ROUNDS OF 762.39 AMMUNITION

Defendants.

(EVERICK NEWBORN AND RICHARD NEWBORN)

VERIFIED COMPLAINT OF FORFEITURE

Comes now, the United States of America ("Plaintiff"), by and through its attorneys, Michael B. Stuart, United States Attorney for the Southern District of West Virginia, and Christopher R. Arthur, Assistant United States Attorney for the Southern District of West Virginia, and respectfully states as follows:

NATURE OF THE ACTION

1. This is a civil action in rem brought on behalf of the United States of America, pursuant to 18 U.S.C. § 983(a), to enforce the provisions of 21 U.S.C. § 881(a)(6), for the forfeiture

of the defendants' property on the grounds that it was furnished or intended to be furnished in exchange for a controlled substance, or constitutes proceeds traceable to such an exchange, in violation of the Controlled Substances Act, 21 U.S.C. §§ 801 et seq.

**THE DEFENDANT IN REM**

2. The defendant property is more particularly identified as follows:

- i. CAI DRACO PISTOL SERIAL NO. DA178112R0; and
- ii. 2 magazines with 80 ROUNDS POF 762.39 ammunition.

The above items were seized on or about May 30, 2019, from the possession of Mr. Everick Newborn ("Newborn") at 4805 Noyes Avenue, Charleston, West Virginia.

**JURISDICTION AND VENUE**

3. Plaintiff brings this action in rem in its own right to forfeit and condemn the defendant property. This Court has jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345, and over an action for forfeiture under 28 U.S.C. § 1355(a).

4. Venue is proper in this district pursuant to 28 U.S.C. § 1355(b)(1), because the acts or omissions giving rise to the forfeiture occurred in this district.

5. Upon the filing of this verified complaint, the plaintiff requests that the Clerk of this Court issue an arrest warrant in rem pursuant to Supplemental Rule G(3)(b)(i), which the plaintiff will execute upon the seized personal property in the custody of the Drug Enforcement Administration, pursuant to Supplemental Rule G(3)(c).

#### **BASIS FOR FORFEITURE**

6. The defendant property is subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(6) because it was purchased with cash that constitutes proceeds of the illegal sale of controlled substances.

#### **FACTS**

7. Mr. Everick Newborn was indicted in a two-count indictment with violation of 21 U.S.C. § 841(a)(1) (distribution of methamphetamine).

8. On May 30, 2019, DEA and U.S. Marshal Service executed a federal arrest warrant for Everick Newborn at his residence at 4805 Noyes Avenue in Charleston, West Virginia ("residence").

9. Newborn disclosed that the officers would find pills in the living room, and a "Draco" gun under the bed in the main bedroom.

10. Officers requested a search warrant from federal Magistrate Judge Tinsley who issued the search warrant for the residence.

11. On May 30, 2019, officers executed the search warrant finding the following:

- i. \$5,000 U.S. Currency found in the pillow in the bedroom;
- ii. Black Taurus 9mm semi-automatic handgun G2, serial No. TLM09272 with loaded magazine;
- iii. CAI Draco 7.62 39mm rifle, serial No. DA1781120, with loaded drum magazine and other loaded magazine; and
- iv. 1,503 30 mg oxycodone pills.

12. On July 16, 2019, Newborn pled guilty to count one of the indictment.

13. On October 16, 2019, the district court sentenced Newborn to prison relating to his activities of distributing methamphetamine, and being in possession of oxycodone pills in violation of 21 U.S.C. § 841(a)(1).

14. Newborn did not dispute the two-level enhancement relating to the firearms located in the residence pursuant to U.S.S.G. § 2D1.1(b)(1).

15. Newborn lived in the residence with his wife and child. There is no evidence that Richard Newborn lived in the house where defendant properties were seized.

16. Newborn admitted after receiving his Miranda rights that the bedroom was his. Officers located various personal items of his, including clothes and documents with his name on them in the bedroom.

17. On August 2, 2019, Richard Newborn filed a claim for the Draco 7.62 39mm rifle, and ammunition.

18. Upon information, Richard Newborn is Newborn's brother. According to the claim filed by Richard Newborn, he resides in Cleveland, Ohio.



19. For the foregoing reasons, the defendant property is forfeitable to the United States, pursuant to 21 U.S.C. § 881(a)(6), because it was purchased with cash that constitutes proceeds of the illegal sale of controlled substances, specifically methamphetamine, a Schedule II controlled substance.

WHEREFORE, the United States prays that process of warrant in rem issue for the arrest of the defendant property; that due notice be given to all parties to appear and show cause why the forfeiture should not be decreed; that judgment be entered declaring the defendant property be forfeited to the United States for disposition according to law; and that the United States be granted such other relief as this Court may deem just and proper, together with the costs and disbursements of this action.

Respectfully submitted,

MICHAEL B. STUART  
United States Attorney

By: s/Christopher R. Arthur  
CHRISTOPHER R. ARTHUR  
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Fax: 304-340-7851  
E-mail: chris.arthur@usdoj.gov

**VERIFICATION**


STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, TO-WIT:

I, Jonathan Vernon, TFO, declare under penalty of perjury as provided by 28 U.S.C. § 1746, the following:

That the foregoing Complaint for Forfeiture in rem is based upon reports and information I personally have prepared or gathered and which have been provided to me by various law enforcement personnel, and that everything contained therein is true and correct to the best of my knowledge and belief, except where stated to be upon information and belief, in which case I believe it to be true.

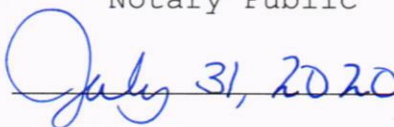
Executed on October 31, 2019.

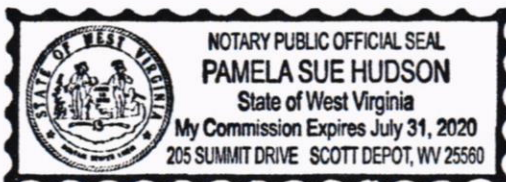
  
\_\_\_\_\_  
JONATHAN VERNON  
TASK FORCE OFFICER

Taken, subscribed and sworn to before me this 31st day of October, 2019.

  
\_\_\_\_\_  
Notary Public

My commission expires on

  
July 31, 2020



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

**DEFENDANTS**

CAI Draco Pistol, Serial No. DA178112R0, Two Magazines and 80 rounds of 762.39 Ammunition

County of Residence of First Listed Defendant Kanawha  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

18 U.S.C. 983(a)

Brief description of cause:

Forfeiture or firearm and ammunition purchased with drug proceeds

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$  
UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER 2:19-cr-00145

DATE

10/31/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Christopher R. Arthur

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

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## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:19-00789

CAI DRACO PISTOL, SERIAL NO. DA178112R0  
TWO MAGAZINES AND 80 ROUNDS OF 762.39 AMMUNITION

Defendants.

(EVERICK NEWBORN AND RICHARD NEWBORN)  
2:19-cr-00145

WARRANT OF ARREST AND NOTICE IN REM

TO: UNITED STATES MARSHAL FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
OR ANY OF HIS AUTHORIZED DEPUTIES

WHEREAS, on October 31, 2019, the United States filed a Verified Complaint of Forfeiture in the United States District Court for the Southern District of West Virginia, alleging that the defendant property was furnished or intended to be furnished in exchange for a controlled substance, or constitutes proceeds traceable to such an exchange, in violation of the Controlled Substances Act, 21 U.S.C. §§ 801 *et seq.*, and therefore is subject to forfeiture to the United States pursuant to 21 U.S.C. § 881(a)(6);

WHEREAS, in these circumstances Rule G(3)(b)(i) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions directs the Clerk of the Court to issue an arrest warrant *in rem* for the arrest of the defendant property; and

WHEREAS, the defendant property is currently in the possession, custody or control of the Drug Enforcement Administration;

YOU ARE, THEREFORE, COMMANDED to arrest the said property, that is the firearm, magazines and ammunition, and to maintain custody of it until further Order of this Court respecting the same; and

YOU ARE FURTHER COMMANDED TO PUBLISH, or cause the United States Attorney to publish, notice of this forfeiture action either in a newspaper of general circulation within the district once a week for three consecutive weeks, or on an official internet government forfeiture site for at least 30 consecutive days, beginning as soon as possible.

A RETURN of this warrant shall be promptly made to the Court identifying the individuals upon whom copies were served and the manner employed, and a statement as to the satisfaction of the orders herein issued.

All persons thought to have an interest in or claim against the defendant property must file a verified claim with the Clerk of this Court, pursuant to 18 U.S.C. § 983(a)(4)(A) and Rule G(5)(a)

of the Supplemental Rules for Certain Admiralty and Maritime Claims, within thirty-five (35) days after the date on which this notice was sent, and shall serve and file their answers or a motion under Rule 12, as directed by Supplemental Admiralty Rule G(5)(b), within twenty-one (21) days after the filing of their claims. A claimant waives an objection to *in rem* jurisdiction or to venue if the objection is not made by motion or stated in the answer.

All such claims and answers must be filed with the Office of the Clerk, United States District Court, P.O. Box 2546, Charleston, West Virginia 25329, with copies thereof sent to Christopher R. Arthur, Assistant United States Attorney, P.O. Box 1713, Charleston, West Virginia 25326. Filing with the Clerk's Office and service upon the United States also may be done electronically by accessing the following website: <https://ecf.wvsc.uscourts.gov>, referencing this civil action.

Failure to file such verified claims and answers in the proper form and in a timely manner may result in such pleadings being stricken from the record or the plaintiff seeking a default or final judgment as may be appropriate.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2019.

RORY PERRY II, Clerk  
United States District Court

By: \_\_\_\_\_  
Deputy Clerk